were informed of the date of hearing as early as March. The fact that the plane tickets might not be available if the booking was not made early is common knowledge. Therefore, if a solicitor were to book the ticket only a couple of days before the trial, then he is not taking his duty to attend court seriously as he should know that there might be no seats available, particularly during festival days and in this case after the Hari Raya holidays. The solicitor's letter dated August 16 reached the court on August 18, one day after the date of hearing. In it he said he intended to travel by car as there were no plane seats but his client suddenly became sick. A sick certificate issued by a private medical practitioner was attached to the letter and appear to have been issued on August 16, one day before the hearing. It would appear, therefore, he booked the ticket only a few days before the date of travel.

The sick certificate stated that the defendant would be unfit for the proper performance of his duties. I did not know on the date of hearing, indeed even now, how sick he was. The medical certificate tells me nothing about his sickness.

The asking for adjournments by parties in this manner will always invariably place the court in a difficult position. Here is a case fixed for hearing about 5 months ago and suddenly on the date of hearing a telegram is received asking for adjournment. The court will have to consider each request for postponements on its own merits. But before the court can grant an adjournment, there should be good reasons. In this case I have only the telegram before me which I feel is insufficient for me to decide in favour of granting the adjournment.

In Kelantan in particular where some litigants engage counsel from the West Coast, there had been difficulties of this nature encountered by the court. I normally allowed adjournments by Kuala Lumpur counsel where there were delays in the MAS flights or where the flights were cancelled. But in this case the air tickets were not booked well beforehand and the defendant was absent for the reason that he was sick and there was no evidence and even on the date of hearing a medical certificate was not produced.

I also feel bad in making the default judgment. But I am of the opinion unless this is done, there would be no way of making parties respect the court. Further, I am of the opinion the aggrieved party can still apply to the court to set aside the order upon giving valid reasons and the case could be restored.

The court cannot allow all adjournments sought. If an adjournment was allowed and it turned out later that the application for adjournment was not reasonable, then the court would be placed in a very awkward position. Time is being wasted. The respect for the court is eroded. In this case, if there is an application to set aside my order, I would have to enquire the real nature of the defendant's sickness and if it was such that he could not travel, I would allow the application.

Order accordingly.

Solicitors: *Gomez & Co.; Ngan & Tan.*

PUBLIC PROSECUTOR v. JAFA BIN DAUD

[A.Cr.J. (Mohamed Azmi J.) February 23, 1981]

[Kuala Lumpur — Federal Territory Criminal Appeal No. 122 of 1980]

Dangerous Drugs — Possession — 0. 21 gms. heroin — Previous conviction — Dangerous Drugs Act, 1952, s. 12(3).

Criminal Law and Procedure — "Sentence according to law" — Meaning — Record of convicted person — Criminal Procedure Code, F.M.S. (Cap. 6), s. 173(m)(2).

The respondent was charged for being in possession of eight plastic straws containing 0.21 gms of heroin, an offence under section 12(2) of the Dangerous Drugs Act, 1952. He pleaded guilty to the charge and was accordingly convicted and sentenced to eight months' imprisonment to take effect from the date of his arrest. The Public Prosecutor appealed against the sentence and argued that the sentence was grossly inadequate on the ground that the Magistrate had failed to appreciate the seriousness of the offence and also had failed to consider that the respondent had five previous convictions, two of which were connected with drugs.

Held: the learned Magistrate had misdirected herself on the fact and the law, and the sentence of eight months' imprisonment was manifestly wrong and inadequate as a deterrent for the accused as well as for would-be offenders. In the circumstances the appeal should be allowed and sentence enhanced from eight month's imprisonment to eighteen months' imprisonment to take effect from date of arrest.

Meaning of "sentence according to law" explained.

Observations on record of a convicted person.

CRIMINAL APPEAL.

Gooi Soon Seng (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Cur. Adv. Vult.

Mohamed Azmi J. (delivering oral judgment): The respondent in this appeal was charged in the Magistrate's Court at Kuala Lumpur for being in possession of eight plastic straws containing 0.21 gms of heroin, an offence under section 12(2) of the Dangerous Drugs Act No. 30 of 1952 (Revised 1980). Under section 12(3) of the Act, the offence is punishable with a fine not exceeding $20,000 or to imprisonment for a term not exceeding five years or to both. The respondent pleaded guilty to the charge on November 26, 1980 and he was accordingly convicted and sentenced to eight months' imprisonment to take effect from the date of his arrest which was November 8, 1980. The Public Prosecutor has now appealed against sentence. The learned Deputy Public Prosecutor argues that the sentence is grossly inadequate on the ground that the Magistrate had failed to appreciate the seriousness of the offence and also had failed to consider that the respondent had five previous convictions — two of which were connected with drugs whilst the other three involved thefts.

From the grounds of judgment, the learned Magistrate had this to say on sentence:

"Considering the accused's previous conviction and especially 2 previous offences relating to opium and the amount of heroin he is charged with now — it was in my opinion fair and adequate to sentence him to 8 months' imprisonment with effect from date of arrest. It is especially because of the quantity which is 0.21 gms which made me give him an 8 months' imprisonment term instead of a longer one."

It seems clear from the grounds of judgment that although in assessing sentence the learned Magistrate

did consider the respondent's previous convictions, she took into account the small quantity of heroin involved as a principal mitigating factor. Section 173(m)(2) of the Criminal Procedure Code provides:

"If the court finds the accused guilty or if a plea of guilty has been recorded and accepted the court shall pass sentence according to law."

A "sentence according to law" means that the sentence must not only be within the ambit of the punishable section, but it must also be assessed and passed in accordance with established judicial principles. In assessing sentence, one of the main factors to be considered is whether the convicted person is a first offender. It is for this purpose that before passing sentence, a Magistrate is required to call for evidence or information regarding the background, antecedent and character of the accused. Where the convicted person has previous records and admits them as correct, the court must consider whether the offence or offences committed previously were of similar nature as the one with which he is presently charged. The court must then consider the sentences imposed in the previous convictions for similar offences to determine whether they have had any deterrent effect on him. Where he is found to be a persistent offender for a similar type of offences, then it is in the interest of justice that a deterrent sentence should be passed and, in such a case, unless there are exceptional circumstances, the quantity, nature or value of the subject-matter of the offence with which he is currently charged can very rarely constitute a mitigating factor.

In the present case, the learned Magistrate failed to take into account that in the two previous convictions for opium offences, the respondent had been sentenced to one year imprisonment in April 1977 and six months' imprisonment in October 1979. The present drug offence was committed in November 1980. Coupled with the other three previous convictions involving thefts for which various terms of imprisonment were passed, the Magistrate should not have found the quantity of 0.21 gms of heroin — the subject-matter in the present charge — as a mitigating factor in the absence of other exceptional circumstances. On the contrary, this fact should have been taken against him on the ground that despite the sentence of imprisonment on the two previous drug offences, the respondent had continued to flout the law by promoting himself from being an illegal possessor of opium to one of heroin. In my view, the learned Magistrate had misdirected herself on the fact and the law, and the sentence of eight months' imprisonment is manifestly wrong and inadequate as a deterrent for the accused and as well as for would-be offenders. In the circumstances, I allow this appeal and enhance the sentence from eight months' imprisonment to eighteen months' imprisonment to take effect from date of his arrest.

One final point regarding the previous record of a convicted person. In this case, although the previous convictions were admitted to be correct by the respondent, their particulars were not recorded in the notes of proceedings. Where a convicted person has a previous record, it is the duty of the Magistrate to take down the detailed particulars of the previous offences. Alternatively, a photostat copy or a certified copy of the previous record should be produced and marked as an exhibit. Personally, I would adopt the alternative method which, I think, is more convenient and would save judicial time. In this appeal, I have to obtain a copy of the previous record from the Deputy Public Prosecutor.

Appeal allowed.
Sentence enhanced.

PUBLIC PROSECUTOR v. CHUNG KWONG HUAH

[O.Cr.J. (Chan J.) March 25, 1981]
[Ipoh — Perak Criminal Trial No. 8 of 1977]

Criminal Law and Procedure — Sentence — Unlawful possession and use of firearms.

Firearms — Unlawful possession and use — Sentencing policy — Firearms (Increased Penalties) Act, 1971, ss. 3 & 9.

When the courts know that the unlawful possession and use of firearms are prevalent, then the time has come for the courts to show their disapproval by acknowledging that offences of this kind are grave and serious crimes and that those who indulge in them must expect a severe sentence.

The public is entitled to be protected and it is not likely to be so protected if lenient sentences are passed.

Cases referred to:-

(1) *Lee Chow Meng* v. *Public Prosecutor* [1976] 1 M.L.J. 287.
(2) *Reg.* v. *Davies* (1978) 67 Cr. App. R. 207, 210.
(3) *Reg.* v. *Sargeant* (1974) 60 Cr. App. R. 74.
(4) *Public Prosecutor* v. *Teh Ah Cheng* [1976] 2 M.L.J. 186, 188.
(5) *Reg.* v. *Blake* [1962] 2 Q.B. 377, 383.

CRIMINAL TRIAL.

Lee Lim Huat for Public Prosecutor.

K. Kumarendran for the accused.

Cur. Adv. Vult.

Chan J.: The accused Chung Kwong Huah pleaded guilty to two charges; one alleging unlawful possession of a Smith & Wesson .32 revolver contrary to section 9 of the Firearms (Increased Penalties) Act, 1971, as amended, and the other alleging unlawful possession of six rounds of .32 ammunition contrary to section 3 and punishable under section 9 of the Arms Act, 1960. I sentenced him to concurrent terms of ten years' imprisonment and six strokes, and three years' imprisonment respectively.

Mr. Kumarendran has said all that could be said for him. He submitted that the accused has an aged mother to support and is the sole provider for his family. Although he was not a first offender (he has a previous conviction for possession of heroin), he urged the court not to take that into account. The accused had pleaded guilty and that should be taken into account.

In recent years, there have been far too many cases of robbery being committed with the use of firearms. Defenceless men and women have been robbed and sometimes brutally attacked by armed